

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
AT LAW AND IN ADMIRALTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-C-0208

APPROXIMATELY \$4,734.00
IN UNITED STATES CURRENCY,

Defendant.

**MOTION TO STRIKE THE CLAIM OF QUENTIN J. PERKINS
AND FOR DEFAULT JUDGMENT**

The Plaintiff, United States of America, by the undersigned Assistant United States Attorney, moves this Court pursuant to Rules 37(b) and 55 of the Federal Rules of Civil Procedure for an order striking the claim and answer of Quentin J. Perkins and for default judgment of forfeiture against the *in rem* defendant, approximately \$4,734 in United States currency.

In support of this motion, the United States asserts the following:

1. On March 12, 2010, the United States filed a Verified Complaint for Civil Forfeiture *in rem*. The complaint alleges that the defendant property, approximately \$4,734 in United States currency, was used, or intended to be used, in exchange for controlled substances, or represents proceeds of trafficking in controlled substances, or was used or intended to be used to facilitate a violation of Title II of the Controlled Substances Act, 21 U.S.C. §§ 801, *et seq.*,

and is therefore subject to forfeiture to the United States of America pursuant to Title 21, United States Code, § 881(a)(6).

2. On March 24, 2010, the United States filed Notice of the Complaint for Civil Forfeiture of Property and served it by certified mail, along with a copy of the Verified Complaint for Civil Forfeiture and the Verification, upon the known claimant, Quentin J. Perkins, by and through his attorney, Patrick Cavanaugh Brennan.

3. On March 25, 2010, United States Marshal Service for this district seized the defendant property pursuant to a Warrant of Arrest in Rem issued on March 12, 2010. The defendant property was originally seized from the person of Quentin J. Perkins in Oshkosh, Wisconsin, on or about October 23, 2009.

4. On April 4, 2010, the United States caused notice of the forfeiture action to be published in the *Milwaukee Journal Sentinel* pursuant to United States District Court for the Eastern District of Wisconsin Local Rule 100.

5. Quentin J. Perkins, by and through Attorney Brennan, filed a timely claim to the defendant property and answer to the complaint.

6. No other claims or answers have been filed in this action, and pursuant to Rule G(5) of the Supplemental Rules of Certain Admiralty Maritime Claims, Federal Rules of Civil Procedure, the time for filing a claim and answer in this action has passed.

7. On October 25, 2010, as a result of Mr. Perkins' failure to respond to the United States' discovery requests, the United States filed a motion to compel Mr. Perkins' answers to interrogatories and request for production of documents and to extend the discovery and dispositive motion deadlines in this matter.

8. On November 30, 2010, this Court issued an order granting the United States' motion and requiring Mr. Perkins to answer the United States' interrogatories and its request for production of documents within ten (10) days of the date of the November 30, 2010 order.

9. As of December 15, 2010, Mr. Perkins did not provide any discovery materials to the United States.

10. On December 15, 2010, I sent an email asking Attorney Brennan if, as a result of a personal matter Attorney Brennan had recently disclosed in a different forfeiture action, he would like an extension of time, until January 4, 2011, to produce Mr. Perkins' answers to the United States' interrogatories and its request for production of documents. Attorney Brennan failed to respond to my December 15, 2010 email.

11. As of February 25, 2011, Mr. Perkins has still not provided any discovery materials to the United States.

12. Under Rule 37(b)(2)(A)(iii) of the Federal Rules of Civil Procedure, the Court may strike any pleadings or a party as a sanction for failing to obey an order to provide or permit discovery. Fed. R. Civ. P. 37(b)(2)(A)(iii); *see, e.g., United States v. \$49,000 in U.S. currency*, 330 F.3d 371, 379 (5th Cir. 2003) (affirming district court's entry of default judgment as a sanction under Rule 37 for claimants' failure to comply with discovery order within the court's deadline).

13. The United States asks that the Court strike Mr. Perkins' claim and answer for his failure to obey the Court's November 30, 2010 order to provide or permit discovery. Mr. Perkins has been given ample notice of the government's discovery requests and ample opportunity to

respond to those requests. Under these circumstances, his failure to obey the Court's order should be considered willful, and striking his claim and answer is an appropriate sanction.

14. Moreover, if the Court strikes Mr. Perkins' claim and answer, the entry of a default judgment as to the defendant property would be appropriate as Mr. Perkins would no longer have a claim or answer on file, and no other parties have filed claims and answers in this matter.

Based on the foregoing, the United States moves this Court for an Order Striking the Claim of Quentin J. Perkins and for Default Judgment pursuant to Rules 37(b) and 55 of the Federal Rules of Civil Procedure.

Dated at Milwaukee, Wisconsin, this 25th day of February, 2011.

Respectfully submitted,

JAMES L. SANTELLE
United States Attorney

By: s/SCOTT J. CAMPBELL
Assistant United States Attorney
Scott J. Campbell Bar Number: 1017721
Attorney for Plaintiff
Office of the United States Attorney
Eastern District of Wisconsin
517 East Wisconsin Avenue, Room 530
Milwaukee, Wisconsin 53202
Telephone:(414) 297-1700
Fax:(414) 297-1738
E-Mail: scott.campbell@usdoj.gov